



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

February 28, 1961

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Capitol Station  
Austin, Texas

Opinion No. WW-1003

Re: Reconsideration of  
Opinion No. WW-922 per-  
taining to taxability  
for inheritance tax pur-  
poses of bequest to the  
United States to be used  
for the retirement of the  
National Debt in view of  
new proposal with regard  
to use of said bequest.

Dear Mr. Calvert:

In Opinion No. WW-922 this office considered the taxabil-  
ity for inheritance tax purposes of a bequest in trust to the  
United States Government to be used for the retirement of the  
National Debt. The specific bequest reads as follows:

"I direct that any income from the  
Susan Vaughan Clayton Trust No. 2 . . .  
be paid for the period provided in the  
instrument creating said Trust, as  
follows:

"(a) One-half (1/2) of such income  
to my beloved country, the United States  
of America, to be used for the retire-  
ment of the National Debt. . . ."

This bequest was subject to inheritance tax unless exempt  
by the following provision of Article 14.06-Class E, ch. 14,  
Title 122-A, Tax.-Gen., V.C.S.:

"Provided, however, that this Article  
shall not apply on property passing to  
or for the use of the United States, or  
to or for the use of any religious, educa-  
tional or charitable organization, incorpo-  
rated, unincorporated or in the form of a  
trust, when such bequest, devise or gift  
is to be used within this State. The exemp-  
tion from tax under the preceding provisions  
of this Article shall, without limiting its  
application under other appropriate cir-  
cumstances, apply to all or so much of any

bequest, devise or gift to or for the use of the United States, or a religious, educational or charitable organization, which is, in writing and prior to the payment of the tax, irrevocably committed for use exclusively within the State of Texas or transferred to a religious, educational or charitable organization for use exclusively within this State."

In an effort to obtain exemption, the following proposal was submitted in a letter from William B. Butler, United States Attorney for the Southern District of Texas, by Norman W. Black, Assistant, dated July 13, 1960, addressed to Honorable Robert S. Calvert, State Comptroller of Public Accounts.

"I have informed the Department of Justice (and they have informed the Secretary of the Treasury) that Article 14.06 offers a possibility whereby the United States could legally avoid the payment of State Inheritance Taxes on this Trust (the tax is estimated at approximately \$400,000.00). The Secretary of the Treasury has suggested the following arrangement, whereby the income from the bequest by the late Mrs. Clayton could be used exclusively within the State of Texas for the retirement of the National Debt. That proposed arrangement is as follows:

"The Treasury would make special arrangements to receive within the State of Texas moneys representing income derived from the Susan V. Clayton Trust No. 2 and would maintain them in a separate account in the name of the Treasurer of the United States in the State of Texas and not intermingle them with any other funds of the United States. Such moneys would be used solely to redeem public debt obligations presented to the Treasury for redemption in the State of Texas.

"Specifically, the moneys would be paid to the United States at the Federal Reserve Bank of Dallas, Texas, for credit to the Treasurer of the United States. The Treasurer would maintain a special deposit account with the Federal Reserve

Bank for these particular moneys. This account would be separate from the account now maintained by the Treasurer with the Federal Reserve Bank of Dallas for General operating purposes. The moneys thus received in Texas and held on deposit with the Federal Reserve Bank of Dallas would be identified specially on the books of the Treasury to be available for retirement of the national debt. From time to time, as public debt obligations are presented to the Federal Reserve Bank of Dallas for redemption by that Bank as fiscal agent of the United States, the Treasury would direct the bank to redeem such obligations from the moneys held on deposit in the special account representing the income from the bequest."

Opinion No. WW-922 reviewed the controlling court decisions and reached the following conclusion:

"We think that the foregoing decisions demonstrate that the 'use' contemplated by the statute is a direct, actual use within the State for the benefit of and limited to its citizens. We do not think that this requisite use can be satisfied by the mere retention in the State of funds devised for the retirement of the national debt. Any benefit which the residents of this State would receive under the proposed arrangement would be at best an incidental benefit shared equally with all of the residents of all other forty-nine states."

In view of this conclusion exemption was denied.

The United States, through its appropriate officials, has submitted another plan which it is urged would satisfy the requisite use within the State of Texas and result in exempting the bequest from any inheritance tax. We set out the plan, as submitted, below:

"The Treasury would make special arrangements to receive within the State of Texas moneys representing income derived from the Susan V. Clayton Trust No. 2 and would maintain them in a separate account in the name

of the Treasurer of the United States in the State of Texas and not intermingle them with any other funds of the United States. Such moneys would be used solely to redeem public debt obligations owned by residents of the State of Texas presented to the Treasury for redemption in the State of Texas.

"Specifically, the moneys would be paid to the United States at the Federal Reserve Bank of Dallas, Texas, for credit to the Treasurer of the United States. The Treasurer would maintain a special deposit account with the Federal Reserve Bank for these particular moneys. This account would be separate from the account now maintained by the Treasurer with the Federal Reserve Bank of Dallas for general operating purposes. The moneys thus received in Texas and held on deposit with the Federal Reserve Bank of Dallas would be identified specially on the books of the Treasury to be available for retirement of the national debt. From time to time, as public debt obligations owned by residents of the State of Texas are presented to the Federal Reserve Bank of Dallas for redemption by that bank as fiscal agent of the United States, the Treasury would direct the bank to redeem such obligations from the moneys held on deposit in the special account representing the income from the bequest."

It is evident that the only difference between the proposal first submitted and the last proposal is that in using the trust income for the retirement of the National Debt, such use would be limited to the discharge of such public debt obligations as are owned by residents of this State.

Although the Government's position in connection with this new proposal is appealing on its face, we do not think it will bear analysis. True, only residents of Texas will have obligations of the United States Government satisfied from the bequest, but are we to assume that an obligation owned by a Texas resident is, for this reason, any less an obligation of the Government of the United States or that the Government's liability is limited to this bequest or must be satisfied therefrom? Wherein lies any benefit to Texas residents in the satisfaction of these obligations from this special fund rather than from any Government revenues? Were we to assume that the Govern-

ment will default in whole or in part in the discharge of its obligations, Texas residents, as a result of the contemplated commitment, would have no added security for their loans. The proposed commitment could not so change the Government's existing contractual liability to all its creditors nor effectuate any priority for Texas creditors.

Finally, who will ultimately benefit from the retirement of part or all of the National Debt of the United States? Not just the creditors who are repaid the loans that they have made to the United States. Rather, all of the citizens of the United States will benefit in the resulting diminution of the tax burden which they must bear.

We must, therefore, again conclude that any benefit which the residents of this State would receive under this last proposed arrangement would be, at best, an incidental benefit shared equally with all of the residents of all the other forty-nine states. The requisite "use within this State" would not be satisfied, and exemption must be denied.

#### S U M M A R Y

A bequest in trust to the United States to be used for the retirement of the National Debt may not obtain exemption from inheritance taxes by a commitment that the bequest will be used to redeem only public debt obligations owned by Texas residents.

Yours very truly,

WILL WILSON  
Attorney General of Texas

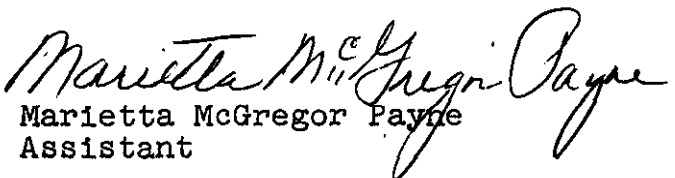
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